

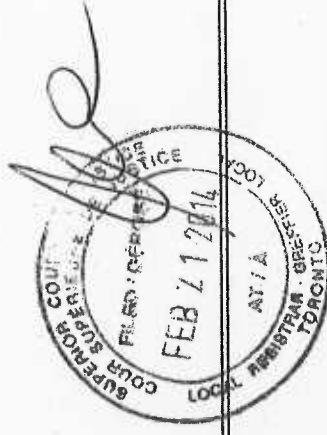
March 6, 2014

Ms. Spiegel for the applicant.
Ms. Stewart in person.

Matter adjourned on terms below to motion scheduling court on March 7, 2014 for the purpose of scheduling an urgent date for this application. The date is preemptory on Ms. Stewart.

The College of Physicians and Surgeons of Ontario (the "College") has brought an application pursuant to s 87 of the Health Professions Procedural Code ("the Code"), being sch. A of the Regulated Health Professions Act, 1991, S.O. 1991c. 18, as amended (the "Act"). The section permits the College to apply to the Superior Court of Justice for an order directing a person to comply with a provision of the Code. As set out in College of Physicians and Surgeons of Ontario v Ravikovich, 2010 ONSC 714, Ont Sup. Ct., an order directing a person to comply with the Code, pursuant to s 87, is in effect a statutory injunction. When such an order is sought, the Court must ask whether there has been a continued breach of the statute by the person against whom the injunction is sought and whether the statute permits the Court to make an order against that person. The College is not required to prove irreparable harm if the order is not

ONTARIO
SUPERIOR COURT OF JUSTICE
Proceeding commenced at Toronto



APPLICATION RECORD

COLLEGE OF PHYSICIANS AND
SURGEONS OF ONTARIO

Legal Office
80 College Street
Toronto, ON M5G 2E2

Lisa Spiegel, LSUC #44041V
Lisa Brownstone, LSUC #30578M
Tel: (416) 967-2600
Fax: (416) 967-2647

Counsel for the Applicant, College of
Physicians and Surgeons of Ontario

PZ. March 6, 2014
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made out.

The Respondent Eve Stewart presents today self represented. She has filed no materials in response. She requests an adjournment advising that she has consulted a lawyer, Richard Busatta. They are presently finalizing a retainer upon which Mr. Busatta will be her counsel of record.

In my view, it will be in everyone's best interest if Ms. Stewart is represented by counsel on this matter. I am therefore inclined to grant her a peremptory adjournment for the purpose of retaining counsel.

The adjournment however, can not be without restrictive terms. ^{In considering the adjournment,} The Court must balance Ms. Stewart's ~~desire~~ ^{desire} to return counsel with the College's role in protecting the public from the activities of unlicensed physicians. Ms. Stewart admittedly is not and never has been a licensed physician. She admits, nonetheless, to performing injections, surgical procedures in the nose and mini facelifts in her home. The Act prohibits individuals who are not members ^{there} of the College, absent appropriate delegation, from performing, specific controlled

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(s 21(2)).

acts. The College has advised Ms Stewart that she is not permitted to perform these acts and is required to cease performing them. She has refused to do so.

Ms. Stewart has claimed that her performance of controlled acts is being done under authority delegated by a physician but has refused to provide the College with

the name of any doctor who is purportedly delegating to her. She further claims that she is qualified to perform these acts and has done so for 5 years without incident or complaint.

For the purpose of the adjournment, Ms. Stewart advised today that she is content to cease all controlled acts but for injections, pending the resolution of the application. The College seeks, as a term of the adjournment, that she be enjoined from engaging in all controlled acts pending the resolution of the application, including injections.

Ms. Stewart admits that she is performing controlled acts. She admits she is not licensed. She believes she is qualified and should be able to continue to perform controlled acts. Until this issue is resolved, in my view, Ms. Stewart should be enjoined from continuing to provide all controlled acts, ~~not~~ including injections. The legislature has decided what services can be performed by those licensed under the Act. The applicant certified these

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who are permitted to provide such services in the interest of public safety. Until it is determined whether Ms. Stewart may properly ~~continue~~ to perform controlled acts as an unlicensed physician, the importance of the public interest and the importance of the regulator's role in protecting the public from the activities of unlicensed and unregulated persons mandate that she be ~~en~~ enjoined from doing so.

As this is an interim injunction pursuant to s 87 of the Health Professions Act and not in accordance with Rule 40 of the Rules of Civil Procedure and as the application is being pursued in the public interest, I find it appropriate in the circumstance that no undertaking for damages be given.

For reasons noted above the application is adjourned to motions scheduling court on March 7, 2014 in the following terms:

1. the adjournment is peremptory on Ms. Stewart;
2. pending the resolution of the application, Eric Stewart, her employees, servants,

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agents or any person acting in association with her or under her instructions must comply with sections 27 and 30 of the Regulated Health Professions Act, 1991, S.O. 1991, c. 18, and in particular refrain from

(i) performing controlled acts in the course of providing health care services to any individual including but not limited to:

- communicating to the individual or his or her representative a diagnosis identifying a disease or disorder as the cause of symptoms of the individual in the circumstances in which it is reasonably foreseeable that the individual or his or her personal representative will rely on the diagnosis
- performing a procedure on tissue below the dermis, below the surface or the mucous membrane;
- administering a substance by injection or inhalation; and
- putting an instrument, hand or finger

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beyond the point in the nasal passages where they normally narrow, or beyond the labia majora, and

(ii) treating or advising a person with respect to his or her health in circumstances in which it is reasonably foreseeable that serious bodily harm may result from the treatment or advice or from omission from them.

3. costs of today reserved to the application judge.

Chiappetta

Chiappetta, MJ